

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte W. HARRY MANDEVILLE, LARRY K. TRUESDALE  
and HOWARD TENNENT

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Appeal No. 1998-1668  
Application No. 08/469,670

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ON BRIEF

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Before KIMLIN, JEFFREY T. SMITH and PAWLIKOWSKI,  
Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 26-57, all the claims remaining in the present application.

Claim 26 is illustrative:

26. A continuous method for the production of carbon fibrils in a fluid reaction zone comprising the steps of:

(a) introducing a suitable gaseous fibril precursor into a lower part of a vertical fluid bed reactor;

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(b) reacting said precursor in said fluid bed in the presence of finely divided particles of a catalyst for converting said precursor to fibrils without the coproduction of a thermal carbon overcoat under fibril-forming reaction-conditions; and

(c) removing fibrils from said reactor at an effluent port located in a lower part of said vertical reactor.

In the rejection of the appealed claims, the examiner relies upon the following patent to appellants:

Mandeville et al.	5,500,200	Mar. 19, 1996
(U.S. '200)		

Appellants' claimed invention is directed to a method and apparatus for producing carbon fibrils without the coproduction of a thermal carbon overcoat. The method comprises introducing a gaseous fibril precursor into the lower part of a vertical fluid bed reactor, reacting the precursor in the presence of a catalyst, and removing the produced fibrils from the reactor through a port located in the lower part of the vertical reactor.

Appellants submit at page 4 of the Brief that "[t]he presently pending claims are believed to stand or fall together with respect to the presently pending rejection." Accordingly, all the appealed claims stand or fall together with claim 26.

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Appealed claims 26-57 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-23 of U.S. Patent No. 5,500,200.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter is an obvious variation of the invention claimed in appellants' patent. Accordingly, we will sustain the examiner's rejection.

There is apparently no dispute that U.S. '200, like the present claims on appeal, claims a continuous method for producing carbon fibrils without the coproduction of a thermal carbon overcoat comprising the steps of introducing a suitable gaseous fibril precursor into a fluid bed reactor, reacting the precursor in the fluid bed in the presence of finely divided particles of a catalyst, and removing the product fibrils from the reactor through an effluent port. It is appellants' contention that the patented claims do not teach or suggest introducing the fibril precursor into a lower part of a vertical fluid bed reactor and removing the product fibrils at an effluent port located in a lower part of the vertical reactor.

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It cannot be gainsaid that the patented claims which form the basis of the double patenting rejection do not specifically recite a vertical fluid bed reactor, nor do the claims recite introducing the precursor into and removing the product fibril from a lower part of the reactor. However, since a vertical fluid bed reactor was known in the art as a conventional type of fluid bed reactor, and appellants do not argue otherwise, we agree with the examiner that it would have been obvious for one of ordinary skill in the art to practice the patented process of U.S. '200 with a vertical fluid bed reactor. Moreover, we find that claim 11 of the patent, when read in light of the specification which exemplifies vertical reactors, would suggest a vertical reactor with the feed and effluent in the lower portion (see claim 11). Also, we concur with the examiner that the location of the feed and effluent ports, including at the claimed lower part of the reactor, would have been a matter of design choice for one of ordinary skill in the art. In re Kuhle, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975). Appellants' specification does not attach any significance or criticality to utilizing a vertical fluid bed reactor or situating the feed and effluent ports at the lower part of the reactor. Nor have appellants proffered any

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objective evidence of nonobviousness to supplement appellants' specification disclosure. Accordingly, we agree with the examiner's legal conclusion that it would have been obvious for one of ordinary skill in the art to perform the claimed process of U.S. '200 in the manner recited in claim 26 on appeal.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
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	)	
	)	
JEFFREY T. SMITH	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
BEVERLY PAWLIKOWSKI	)	
Administrative Patent Judge	)	

ECK:clm  
Barry Evans  
Whitman, Breed, Abbott and Morgan  
200 Park Ave.  
New York, NY 10166

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